



Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.119
13 November 1992

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 119th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 9 November 1992, at 10.30 a.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.119/Add.1.

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GE.92-14386 (E)

The meeting was called to order at 10.40 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared the session open and welcomed the members of the Committee.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CAT/C/19)

2. The provisional agenda (CAT/C/19) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

3. The CHAIRMAN announced that Mr. Ben Ammar had been awarded the UNESCO Prize for the Teaching of Human Rights. He congratulated Mr. Ben Ammar on behalf of the Committee.

4. The Under-Secretary-General for Human Rights would make a statement to the Committee on the following day in which he would provide information on developments in the Centre for Human Rights. The following members of the Committee would investigate and report whether the work of certain human rights bodies might be of interest to the Committee against Torture: Mr. El Ibrashi (Human Rights Committee); Mr. Burns (Committee on Economic, Social and Cultural Rights); Mr. Dipanda Mouelle (Committee on the Elimination of Racial Discrimination); Mr. Voyame (Committee on the Elimination of Discrimination against Women); Mr. Sorensen (Committee on the Rights of the Child); and Mr. Khitrin (Group of Three established under the International Convention on the Suppression and Punishment of the Crime of Apartheid).

5. The question of an optional protocol to the Convention had already been discussed at length at the last two sessions and, while generally endorsing the principle of a system of preventive visits to places of detention, the Committee had acknowledged that there might be difficulties in coordinating the activities of the Committee itself and those of a body set up specifically in connection with the implementation of such a protocol, as well as with the activities of regional bodies such as the Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. There might also be a problem of confidentiality.

6. Shortly after the most recent meeting of Chairpersons of human rights treaty bodies, he had attended a meeting of the Working Group set up to prepare a draft optional protocol and had made a statement which he would circulate for the information of the members of the Committee. He had indicated the Committee's favourable views on the desirability of a universal system of preventive visits to places of detention. The statement had given rise to a lengthy barrage of questions by the members of the Working Group, many of whom had not been very well informed about the Convention, the Committee, its mandate and the implications of the optional protocol that was under consideration. He had done his best to present the Committee's views on all the issues raised, clearly indicating whenever the opinions he expressed had been personal; he had added that, since the members of the Committee themselves could be regarded as experts on matters of concern to the Working Group, they might have a useful contribution to make to its discussions. That

idea had been warmly endorsed by the members of the Working Group and there was now a possibility for the Committee against Torture to designate an observer to attend its meetings and - in particular - to provide the Group with information.

7. He suggested that, as the member of the Committee with the most experience of preventive visiting, Mr. Sorensen would be the best qualified to advise the Working Group.

8. Mr. SORENSEN said that he would be pleased and honoured to undertake that task, provided that it did not conflict with other commitments. Although he was a member of the European Committee for the Prevention of Torture, he did not think that there would be any conflict of loyalty or interest or any problem of confidentiality if he were to assume the role suggested by the Chairman. In fact, his own feeling was that exercise of the two functions could only help him in the endeavours to which he was so strongly committed.

9. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed that Mr. Sorensen should assume the role he had suggested.

10. It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION
(agenda item 3)

11. The CHAIRMAN recalled that Belize had submitted an unsatisfactory one-page report to the Committee and had not sent representatives to introduce it. All requests for additional information having remained unanswered, he proposed that the report of Belize should be considered in the absence of representatives of that country. Perhaps the secretariat could inform Belize that the report would be discussed at the April 1993 session.

12. It was so decided.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (CAT/C/5/Add.31; CAT/C/9/Add.10 and 12; CAT/C/12/Add.1 and 2; CAT/C/17/Add.1-6)

13. The CHAIRMAN said that periodic reports from Hungary, Panama and Sweden had been received too late to be examined at the current session and would therefore be considered in April 1993. After calling for volunteers to act as country rapporteurs and alternate country rapporteurs, he said that, for Hungary, Mr. Mikhailov would act as Country Rapporteur and Mr. Ben Ammar as Alternate Country Rapporteur; for Sweden, Mr. El Ibrashi as Country Rapporteur and Mr. Lorenzo as Alternate Country Rapporteur; and, for Panama, Mr. Sorensen as Country Rapporteur and Mr. Burns as Alternate Country Rapporteur. He also noted that, for the periodic report of Canada, Mr. El Ibrashi had already volunteered to act as Country Rapporteur and that he himself would be acting as Alternate Country Rapporteur and that, for China, Mr. Dipanda Mouelle would act as Country Rapporteur and Mr. Burns as Alternate Country Rapporteur.

14. As to the report of Afghanistan, to be considered the following day, Mr. Burns had volunteered to act as Alternate Country Rapporteur to replace Mr. Dipanda Mouelle, who was unable to be present.

15. In April, the Committee had had a meeting with the Board of Trustees of the Voluntary Fund for Victims of Torture and, at the request of the Chairman of that body, the Committee had promised to draw the attention of States to the activities of the Fund.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS
(agenda item 7)

16. Mr. SORENSEN, reporting on the third session of the Preparatory Committee for the World Conference on Human Rights, which he had attended with Mr. Mikhailov, noted that, between the second and third sessions, it had been decided that the World Conference would be held in Vienna for two weeks in June 1993.

17. At the third session of the Preparatory Committee, agreement had been reached on the World Conference's rules of procedure, under which human rights treaty bodies attending the World Conference would have the right to speak on and participate in the discussion of all matters concerning them, but would not have the right to vote. Following a discussion on participation by non-governmental organizations, it had been agreed that not only those having status with the Economic and Social Council would be allowed to participate, but also those that had already participated in regional meetings.

18. The real problem had arisen in connection with the proposed agenda, item 9 of which referred to the "Evaluation of the results achieved and the obstacles to the promotion, full realization and protection of all human rights and fundamental freedoms [including the right to self-determination, the elimination of foreign occupation, racism, xenophobia and all forms of racial discrimination, including apartheid], with emphasis on the implementation of human rights standards and instruments and on the effectiveness of the United Nations machinery". Despite a week-long discussion, it had not been possible to reach an agreement on whether to include or delete the phrase in square brackets.

19. The day before the meeting had been due to close, the Asian group had proposed that there should be a completely new agenda. Intensive negotiations had taken place and it had been suggested that the agenda should be open-ended, so that anyone would be free to propose additional items. Protracted discussions had then taken place on the meaning of the words "agenda" and "annex". It had been impossible to reach agreement on such definitions and the third session of the Preparatory Committee had closed without an agenda being prepared. That meant that discussions on it would have to begin all over again at the fourth session of the Preparatory Committee, when every effort should have been concentrated on the content and preparation of the final documents.

20. The main purpose of the two forthcoming regional preparatory meetings in San José and Bangkok was to discuss the preparations for the World Conference, but that would be difficult without an agenda. That was a very critical

situation. Some delegations had suggested that it might, in the circumstances, be wise to postpone the World Conference, since it appeared that some participating States were not deeply interested in its outcome. One suggestion had been that it should be postponed until 1998 so that it would coincide with the fiftieth anniversary of the Universal Declaration of Human Rights.

21. The human rights treaty bodies, whose representatives were well versed in human rights matters, had had no real opportunity to participate in the discussions at the third session of the Preparatory Committee because, contrary to the rules of procedure, they had largely been denied the floor, although he personally had made a strong statement early in the discussion, as had the Chairperson of the Committee on the Elimination of Discrimination against Women. The treaty body representatives had discussed matters among themselves and agreed that action must be taken to ensure the success of the World Conference. They had carefully considered the consensus decision taken by the General Assembly in resolution 45/155 to convene the World Conference and had stressed the need to examine ways and means of improving the implementation of existing human rights standards and instruments, evaluating the effectiveness of United Nations methods and mechanisms in the field of human rights and formulating complete recommendations for improving such effectiveness through programmes aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms. The human rights treaty bodies had the necessary competence and experience in all those matters. They had requested the meeting of Chairpersons of the human rights treaty bodies to suggest to the General Assembly that those important points should appear on the agenda for the World Conference, to establish three special working groups, one of which should deal with pragmatic questions, and to report back to the General Assembly.

22. The CHAIRMAN said it was unfortunate that representatives of the treaty bodies had not been granted the right to speak to which they had been entitled under the rules of procedure, particularly since they were the persons most familiar with human rights problems. The meeting of Chairpersons had protested about that situation and had stated that the representatives of the treaty bodies should, in future, have the same right to speak as all other participants, even though, as observers, they could not take part in the adoption of decisions. He sincerely hoped that Mr. Sorensen and Mr. Mikhailov would be heard in the future.

23. The meeting of Chairpersons had recommended that the Committee should participate in regional conferences. The Committee itself had considered such participation unnecessary, particularly in view of the cost. It might, however, reconsider its position in the light of the Chairpersons' decision and of the statement to be made by Mr. Ben Ammar.

24. Mr. BEN AMMAR said that, immediately preceding the African Regional Preparatory Meeting, meetings had taken place with the participation of such groups as lawyers, human rights organizations and non-governmental organizations based in African-Arab countries and Arab countries in general. Governmental organizations had, for the first time, been invited as observers. The Assistant-Secretary-General of the Arab League and other personalities had attended. Seventy-four African non-governmental organizations had been

represented and had participated as observers in the African Regional Preparatory Meeting with the right to speak in plenary meetings. The Meeting, which had taken place in Tunis from 2 to 6 November, had been the first regional meeting to keep to its original timetable.

25. The President of the Tunisian Republic had made a comprehensive opening statement, which had become a working document of the Meeting. The representative of the United Nations Centre for Human Rights and the representative of the Organization of African Unity had also made statements. He himself had referred to the effectiveness of United Nations instruments and mechanisms and to the responsibility of States for protecting and promoting human rights. He had drawn attention, in particular, to the need to review the financial organization of the United Nations so that the Centre for Human Rights and committees such as the Committee against Torture would be able to play their part and had put forward a recommendation to that effect. He had appealed to African States to accede to the Convention against Torture, pointing out that only 10 had so far done so. The Under-Secretary-General for Human Rights, who had attended the Meeting, would no doubt provide comprehensive information on its work.

26. The CHAIRMAN said he assumed that Mr. Sorensen and Mr. Mikhailov would continue to represent the Committee at sessions of the Preparatory Committee. He asked whether the Committee wished to participate in the regional meetings to be organized in San José in January 1993 and in Bangkok at a time yet to be decided.

27. Mr. SORENSEN said that, if the Committee was to be represented at the regional meetings, he would volunteer to participate in the San José meeting. He had just returned from Guatemala, where a large human rights operation was in progress. The European Community had a multi-annual programme for the promotion of human rights in Central America with three experts from Central Africa and three from Europe, of whom he was one. He therefore had some knowledge of human rights in the region.

28. Mr. BURNS said that he had listened closely to Mr. Sorensen's report about the general preparations for the World Conference and he was deeply concerned, since not all States Members of the United Nations were as deeply committed to the World Conference as were Committee experts and non-governmental organizations; and that situation was unlikely to change. When a conference was organized on so vast a scale to celebrate the development of human rights, it could be expected that not all countries would agree, since they did not all subscribe to its values. Mr. Sorensen had described the quasi-political problems that had arisen. Although they should not prevent the Committee from taking part in the celebrations, he was completely unconvinced that it should spend any of its resources on participation in regional meetings. It had an extremely limited budget and there were more important activities for which its funds would be needed in the future.

29. Mr. EL IBRASHI, noting that the Latin American and Asian groups were to hold regional meetings in San José and Bangkok, respectively, asked whether other groups intended to hold similar meetings. With regard to Mr. Burns' comments, he wished to know whether the cost of the Committee's participation

in regional meetings would be borne by the United Nations or whether the Committee itself would have to bear the cost.

30. The CHAIRMAN said that there had been the African Regional Preparatory Meeting in which Mr. Ben Ammar had participated. He was not certain whether similar meetings were to be held in Europe and North America or whether the United Nations would pay the necessary expenses for attendance at regional meetings.

31. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that three regional meetings had been planned: the one that had already taken place in Africa and those to be held in Asia and in the Latin American, Central American and Caribbean region. So far as she was aware, there would be no regional meetings in Europe or North America. States had been invited to make voluntary contributions to a fund to cover travel expenses for delegations from the least affluent countries, but other countries and organizations would have to pay their own expenses. The United Nations had a budget for the organization of the World Conference, but she did not know whether the participation of an expert from each Committee could be financed from that budget, which was not very big. The recommendations of the meeting of Chairpersons had been drawn to the attention of the Coordinator for the World Conference and she could contact him if the Committee so wished. The Third Committee of the General Assembly had before it a draft resolution on the World Conference which was sponsored by a large number of delegations and to which a draft agenda was annexed.

32. Mr. BEN AMMAR said that, if the Asian and Latin American meetings followed the pattern of the African meeting, the role of the Committee's representatives would be confined to conveying a message from the Committee. He doubted whether they would be able to take part in the consideration of draft resolutions.

33. As to financial matters, the European Community had earmarked ECU 500,000 for the World Conference, but he did not know whether the Committee would be able to share in those funds.

34. Mr. EL IBRASHI said that there appeared to be some contradiction between the decision taken by the meeting of Chairpersons to encourage participation in the various meetings and the fact that only a very limited budget existed. He agreed that the Committee should not use its own resources to meet the cost of participation in regional meetings, important though they were. Its decision on the subject would have to depend on whether the United Nations could cover the cost.

35. The CHAIRMAN said that the Committee against Torture and the Committee on the Elimination of Racial Discrimination were the only treaty bodies not to be financed from the United Nations regular budget.

36. Mr. SORENSEN, pointing out that his participation in the fourth session of the Preparatory Committee was for the moment hypothetical, said he believed that, at the third session, a great deal of useful work had been done on behalf of the treaty bodies because the representatives of participating Governments had been made aware of their activities and initiatives. If he

took part in the fourth session and if the Committee so agreed, he would continue to do his utmost to have the issue of torture placed on the agenda of the World Conference. At the third session, one representative had suggested the admirably pragmatic goal of eradicating torture by the year 2000. He himself urged that more should be done to identify obstacles to the implementation of human rights instruments and to streamline reporting procedures. He also advocated the establishment of a strongly backed international human rights institute in Geneva.

37. Mr. BURNS, recalling that the question of attendance at regional preparatory meetings had already been much discussed, said that it would be nothing short of outrageous if the costly exercise of sending members of treaty bodies to such meetings resulted in no more than invitations to deliver brief token messages.

38. Mr. LORENZO said he agreed that the Committee's own scant resources must not be spent on attendance at preparatory meetings unless such attendance was likely to be fruitful. For his part, he believed that good work in promoting the aims and activities of the Committee against Torture could be done on the sidelines of such meetings; perhaps efforts should be made to obtain other sources of financing; arrangements such as that whereby Mr. Ben Ammar had attended the Tunis meeting might also be explored.

39. The CHAIRMAN suggested that the secretariat might be asked whether the costs of attendance at preparatory meetings for the World Conference on Human Rights might be met from external sources; how the planned regional preparatory meetings were to be organized, particularly with regard to working languages and interpretation because that would affect the Committee's choice of representatives; and what provision was likely to be made for the active participation of members of human rights treaty bodies in such meetings. In the meantime, Mr. Sorensen and Mr. Mikhailov might be requested to draft a recommendation, for consideration and endorsement by the Committee, concerning the agenda of the World Conference on Human Rights.

40. It was so decided.

41. Mr. BEN AMMAR, replying to a question by Mr. LORENZO, said he understood that, while the dates of 1993 and 1998 had been formally proposed for the World Conference, Colombia had also proposed at the General Assembly that it should be held in 1995. He would probably attend another preparatory meeting, the International Conference on Education for Human Rights and for Democracy, to be organized by UNESCO and the Centre for Human Rights and scheduled to be held in Montreal in March 1993, and he wondered whether Mr. Burns might also be free to take part in that Conference.

The public meeting rose at 12.10 p.m.



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Ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 120TH MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 November 1992, at 10 a.m.

Chairman: Mr. VOYAME

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Consideration of report submitted by States parties under article 19 of the
Convention

Initial report of Afghanistan

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this session will be consolidated in a single corrigendum, to be issued
shortly after the end of the session.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Initial report of Afghanistan (CAT/C/5/Add.31)

1. At the invitation of the Chairman, Mr. Nohmat, Mr. Noori, Mr. Akrami and Mr. Mokhtarzada (Afghanistan) took places at the Committee table.

2. Mr. NOHMAT (Afghanistan) said that the Islamic State of Afghanistan had great respect for the Committee against Torture and recognized the importance of its work. Since Afghanistan was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it was willing to strengthen its ties with the Committee and to cooperate wherever possible. However, although Afghanistan had undertaken international commitments and wanted to respect them fully, it was not always in a position to do so on account of domestic problems and the lack of infrastructure needed to apply the standards set in international instruments. Afghanistan would welcome any assistance that could be provided by the United Nations and the advisory services of the Centre for Human Rights.

3. He drew particular attention to the fact that the report before the Committee had been submitted on 21 January 1992 and prepared by the previous regime. He therefore found himself in the difficult position of having to introduce and comment on a report drawn up before the present Government had come to power. The report had a number of shortcomings, particularly because it did not go into enough detail and lacked examples of how international standards were being implemented and what measures had been taken to give effect to the provisions of the Convention.

4. Since the report had been drafted, enormous changes had taken place in Afghanistan and the country was having to deal with all the damage and destruction that had been caused. The holy war (jihad) had brought a new administration to power and, according to Islamic doctrine, it provided the means by which to combat social injustice and tyranny and to restore peace, justice, equality and fraternity, as well as law and social order, in accordance with the sacred precepts of Islam. The transitional Government was facing difficulties due to Afghanistan's internal conflicts, but free and democratic elections would help normalize the situation. A new Constitution based on Islamic principles would provide the framework for the legal system and guarantee protection for all persons against any abuses. The Constitution would be entirely in conformity with international law and, in particular, with international human rights instruments. The Islamic State of Afghanistan was taking measures to improve the judiciary and to prevent criminal acts from being committed in the country and its foreign policy was based on non-interference in the affairs of other States and unconditional support for the United Nations Charter. It fully recognized that the practice of torture was a particularly serious violation of human rights.

5. Mr. SORENSEN (Country Rapporteur) said that he recognized the seriousness of the problems Afghanistan was facing as a result of all the changes that had recently taken place. However, human rights were the key to solving many of

those problems. During a transition period between one regime and another, human rights were often neglected, but article 2, paragraph 2, of the Convention stated that "no exceptional circumstances ... may be invoked as a justification of torture".

6. With regard to the report that had been submitted, he realized that the representatives of Afghanistan were in a difficult position because it had been drafted before the present Government had come to power, but some additional comments and information were nevertheless needed. For example, although the death penalty theoretically did not come within the Committee's mandate, the Committee had received information from Amnesty International stating that three persons had been publicly hanged in Kabul on 7 September 1992. He requested the Afghan representatives to provide further explanations, since he had thought that public hangings could be regarded as cruel and degrading punishment. Clarifications were also needed on the supremacy of Islamic law, which had, according to the Afghan representatives, superseded all other legislation, and on the information provided by Amnesty International that, under Islamic law, a person could be stoned to death for adultery, that persons guilty of theft could have a hand or foot cut off, that the consumption of alcohol was punishable by 80 lashes and that the death penalty was applicable for persons found guilty of trading in alcohol. He wished to know whether Afghanistan characterized such penalties as "pain or suffering arising only from, inherent in or incidental to lawful sanctions", as stated in article 1 of the Convention.

7. According to paragraphs 7, 9, 12 and 44 of the report, testimony, confessions or statements obtained by compulsion were not "valid". He asked the Afghan representative for comments on the meaning of the term "valid" and drew their attention to the fact that article 15 of the Convention made it clear that any statement made as a result of torture should not be "invoked as evidence". Paragraph 10 of the report stated that torture was regarded as a crime. However, it was not clear what criminal penalties could be applied to those found guilty of practising torture. He would like to know whether such persons could be sentenced to long-term imprisonment without a criminal trial and what the minimum and maximum sentences would be. More information was also needed on the rights of persons under arrest, including the right to be informed of charges against them; the right to remain silent; the right to have their relatives informed of their whereabouts; the right to communicate with a lawyer; and the right to be examined by a doctor of their choosing.

8. The Committee would like to know how legislation stood at the present time, as a result of the fall of the previous regime. With regard to paragraph 17 of the report, he asked whether Afghanistan had a code of conduct for methods and practices of interrogation and whether a register was kept of persons under arrest, giving details of arrests, interrogations and other information which would protect prisoners against ill-treatment and torture and cover arresting officers if accusations of torture were made against them.

9. Referring to paragraph 27 of the report, he asked whether the Constitution in question was still in force, since it had been stated in the oral introduction that a new Constitution was being drafted. Paragraph 29 of the report mentioned the expulsion or return of refugees, but did not go into detail about the status of foreign refugees in Afghanistan, simply stating

that "No citizens of the Republic of Afghanistan shall be exiled inside or outside the country". To what extent did such a provision comply with article 3 of the Convention? He also requested clarifications on the wording of paragraph 38 of the report, which was rather negative, unlike article 9 of the Convention, which was positive. In his opinion, paragraph 39 of the report was referred to matters that were of the utmost importance as far as the eradication of the practice of torture was concerned. He commended Afghanistan on the fact that training and education regarding the prohibition against torture were provided for doctors, in accordance with article 10 of the Convention. He nevertheless wished to know whether such educational opportunities were also available to dentists, nurses, physiotherapists and other medical personnel, whether such training was at the graduate or the post-graduate level and whether any medical rehabilitation programmes had been set up.

10. Mr. BURNS (Alternate Country Rapporteur) said that it would be preferable for the current report to be withdrawn and for a new one to be submitted because it was not clear what information was still valid and what would need to be changed. As it was unfair to ask the representatives of the Government of Afghanistan to reply at such short notice, an additional report would be necessary. The Committee was aware of the difficult situation that Afghanistan was facing.

11. According to paragraph 27 of the report, international conventions took precedence over domestic law. He asked whether that continued to be the case and how international law was incorporated into domestic law at the present time.

12. The report stated that the judiciary was independently appointed. In view of the decisions adopted by the Afghan leadership in May 1992 and the procedural guidelines issued to the judiciary in July 1992 advising that all laws not in conformity with Islamic injunctions were to be abolished and that all members of the judiciary must interpret the law in the light of Islamic principles, he wondered whether the description of the courts contained in the report was still accurate. If so, he asked what their relation was to the Islamic courts and, if not, he requested further information on the hierarchy of the courts, on how the judiciary was appointed and on the relationship between the Islamic courts and other courts in the event that they existed side by side.

13. Since the report appeared to suggest that legal aid for persons accused of offences was a future goal rather than actual reality, he asked for a description of the legal profession in Afghanistan and wished to know whether a person accused of an offence had access to a lawyer upon arrest, when charged with an offence and when tried. Was the accused responsible for obtaining and paying a lawyer or did the State provide such services? What powers did the police, the security services and the army have for making an arrest, how long could a person be held in custody before being brought before a judicial official and was he entitled to legal counsel while in custody? Was there a period during which a person could be held incommunicado upon arrest? Was there any review by a judicial officer of a person held in custody? Was there anything in Afghan law analogous to habeas corpus, under which an accused person could go before a judge and require the State to show

that there were grounds for his detention? According to the report, the former Constitution provided for compensation for the victims of wrongful acts committed by agents of the State and he inquired whether that was still the case, how such compensation was obtained and whether there were statistics showing that any citizen had ever received such compensation.

14. Notwithstanding paragraph 38 of the report, it would appear that article 34 of the Afghan Constitution stating that "No citizens of the Republic of Afghanistan shall be exiled inside or outside the country" and article 35 specifying that "No citizen of the Republic of Afghanistan shall be extradited to a foreign State", as quoted in paragraph 29 of the report, were in clear breach of article 8, paragraphs 1 and 2, of the Convention. Article 8 of the Convention implied that even Afghan citizens must be extradited, for example, in the case of an Afghan citizen accused of having committed torture in another State. He asked whether those articles were still valid under Afghan law and, if so, how the Afghan Government explained the manifest conflict with its obligations under the Convention.

15. Paragraph 37 of the report stated that "Trial in the courts of the Republic of Afghanistan shall be held openly". Yet the Committee had information indicating that a recent trial in which four persons had been sentenced to death had been held in camera and that no appeal or review had been allowed. He asked whether trials were open to the public under the new legal system and whether provision had been made for review or clemency in the case of persons convicted of serious offences.

16. Mr. EL IBRASHI said that he also wondered whether the report was still valid and whether it reflected the point of view of the present Government. If not, it should be put aside and the Committee should wait for a new report.

17. As a Muslim and a student of Islamic law, he noted that, under Islamic criminal law, there were two types of punishment for crimes. The more serious type, the hudud, was restricted to crimes specified in the Koran and involved harsh penalties. For such penalties to be imposed, the accused must admit the crime and the evidence must be very clear. If there was any doubt, the hudud was ruled out. When deciding whether to impose such punishment, it was also essential to consider the circumstances of the crime. For example, if a man stole a loaf of bread to feed his family, the hudud did not apply.

18. It had been asserted that, under Islamic law, the death penalty was imposed for trading in alcohol but that was not true.

19. He asked the Afghan representatives to explain the legal system of criminal law in Afghanistan. Simply saying that Islamic law was applied was too vague and he asked which specific provisions of Islamic law were meant.

20. Mr. GIL LAVEDRA said he agreed with other members of the Committee that a new report was needed. It was difficult for the Committee to analyse a report if it was not clear whether it was still valid. A new report should take account of all the questions asked and be based on the general guidelines regarding the form and contents of reports, as well as focusing on such aspects as the structure of the legal system, conditions of detention and the role of training and education. He agreed with Mr. El Ibrashi that it would

be important to clarify to what extent Islamic law was incorporated into Afghan criminal law.

21. Mr. MIKHAILOV said that it would be preferable to examine the report submitted rather than the current situation, for which the Committee had no report.

22. There had been a number of positive elements under the previous system. For example, the previous Government had ratified the Convention against Torture and the provisions of its Constitution had been consistent with the Convention. However, the legislative and legal system had now changed and a civil war was currently being fought in Afghanistan. The Committee should therefore consider the initial report and give Afghanistan the possibility of submitting a periodic report at a later date covering the period that followed.

23. Mr. BEN AMMAR said that there had been a change in Afghanistan from a communist to an Islamic Government and he wished to know whether the new regime considered itself bound by the international conventions ratified by the previous regime. That was an important question because Islamic Governments had ratified very few international instruments. He asked whether there was a legal text defining the state of emergency and its limitations and specifying which articles could be derogated from if a state of emergency was declared. He recalled that the Convention prohibited torture even in the event of domestic unrest. Did the Government of Afghanistan consider itself bound by the Geneva Conventions and their Optional Protocols with regard to states of emergency?

24. Were representatives of the International Committee of the Red Cross authorized to visit detention centres in Afghanistan? Was domestic law consistent with international commitments? The report stated that the judiciary was independent and he asked who appointed, promoted and punished judges. Was freedom of association respected? Were there legal opposition political parties? Was there freedom of the press and could the representatives of Afghanistan provide the names of free newspapers? Was there an organization for the defence of human rights and what was its name?

25. With regard to the question of non-interference in the affairs of States, he had heard allegations that persons had been trained in Afghanistan to destabilize other countries through violence.

26. The CHAIRMAN said that some of Mr. Ben Ammar's remarks did not seem to relate to the Convention against Torture, although they were perhaps of interest in a general context.

27. Mr. BEN AMMAR said that his comments should be seen in the light of the introductory remarks made by the representative of Afghanistan.

28. The CHAIRMAN asked whether there had been any cases of torture in Afghanistan and, if so, whether the Afghan representatives could provide some details on that problem.

29. Mr. SORENSEN suggested that the representatives should return at the next meeting to answer some of the questions raised and that the Committee should then decide on that basis how to proceed further. It was important to take advantage of the presence of the representatives, some of whom had travelled a great distance to be present in the Committee.

30. Mr. BURNS said that he shared Mr. Sorensen's view. The representatives of Afghanistan should provide as much information as possible, but, ultimately, a new report would be required because they could not possibly answer all the questions asked in such a short time.

31. The CHAIRMAN said that he agreed. Perhaps the Government of Afghanistan could be asked to provide a short additional report and a periodic report as a single document. The Committee might regard that as Afghanistan's first periodic report and then the next periodic report would be due in four years.

The public meeting rose at 11.35 a.m.